

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 800 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JASHWANTLAL HIRALAL PATEL

Versus

TURSTEES OF THE TRUST OF THE NAME MAGANBHAI KARAMCHAND

Appearance:

MR HB SHAH for Petitioners
Mr.M.G.Doshit, for M/S MG DOSHIT & CO
for Respondent No. 1
MR BR SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: ____/04/2000

C.A.V. JUDGMENT :

1. Appellants-original defendants have filed this appeal under Section 9 of the Ahmedabad City Civil Court

Act, 1961, challenging judgment and decree dated December 30, 1978, passed by learned Judge, Court No.7, City Civil Court, Ahmedabad, in Civil Suit No.951 of 1974, by which judgment and decree, the appellants were directed to hand over actual and vacant possession of the suit rooms more particularly described in paragraph 11 of the plaint.

2 Few relevant facts be summarized as under: The plaintiffs are trustees of Public Trust, namely, 'Maganbhai Karamchand Station Dharmshala Fund" ('Trust' for short). Hiralal Sakarlal, father of appellants Nos. 1, 3 and 4 and husband of appellant No.2, was attending to the work of allotting rooms to the travellers putting up in the station dharmshala of the Trust. Hiralal Sakarlal was incharge of the rooms to be allotted to the travellers and, for that purpose, he was allowed to do the management of all the rooms of the dharmshala. The keys of all the rooms of dharmshala used to remain with said Hiralal. It was alleged that Hiralal used to store articles of the Trust in the suit rooms and. after death of said Hiralal, the appellants were illegally using and occupying the suit rooms. According to the respondents, possession of the appellants qua suit rooms was illegal and they were trespassers thereof. The respondents had served notice on July 23, 1973 on the appellants to hand over possession of suit rooms, but the appellants did not comply with the said notice and, hence, the respondents were constrained to file the suit in the City Civil Court for the relief stated in the plaint.

3. Appellants Nos. 1 to 4 as well as appellants Nos. 5 and 6 resisted the suit of the respondents by their written statements Exh.14 and 17, respectively. Respondent No.6 filed his written statement at Exh.131 to the amended plaint. Appellants Nos. 1 to 5 and 7, by purshis Exh.132, had adopted as their written statement to the amended plaint the contentions taken by appellant No.6 in written statement Exh.131. Appellant No.7 had filed purshis Exh.120 and had adopted as his written statement the contentions taken by respondents nos.5 and 6 in written statement Exh.27. It was the case of the appellants that respondents were not trustees of the Trust and they had no right to file the present suit. That, the respondents should prove that Hiralal Sakarlal was doing the management of the dharmshala in question and was looking after the work of allotment of the rooms of the said dharmshala to the travellers and the keys of the suit rooms used to remain with him. It was averred that the suit suffers from the defects of misjoinder and nonjoinder of parties, in as much as, the persons entitled to file the suit have not filed the suit and

that the persons interested in possession of the suit rooms are not joined as parties. It was further contended that appellant No.5, partnership firm, was and is tenant of the suit rooms and the shop bearing Survey No.671 and Municipal Census No.575/16 and the suit was filed improperly against heirs of deceased Hiralal Sakarlal with regard to shop bearing No.671 Municipal Census No.575/16 because all heirs of deceased Hiralal Sakarlal were not joined as parties. It was further contended that the respondents subsequently joined defendant No.5 (appellant No.5), partnership firm, carrying on business of selling kerosene, etc, in the name and style of Sakarlal Ambalal, for the last several years in the shop in question as well as in the suit rooms and that the suit rooms formed part of premises in possession of the appellants. It was denied that the appellants were trespassers of the suit rooms. It was averred that rent receipts were issued in the name of Hiralal, who was a partner of firm "Sakarlal Ambalal" and Hiralal was not tenant in his individual capacity and the amounts of rent were paid from the funds of the said partnership firm, and the respondents had never taken objection regarding the same. It was further contended that the appellants had given reply on September 11, 1973 to the suit notice of the respondents. It was further contended that the suit was not properly valued for the purpose of court fees, and, there being dispute between the landlord and tenant, the City Civil Court had no jurisdiction to entertain and try the suit.

4. Upon rival pleadings of the parties, learned City Civil Judge framed issues at Exh.28. To prove the case against the appellants, the respondents examined (1) Mukundbhai Ramanlal Shah, at Exh.32, who was employee of Sarabhai Group since 1938, and (2) Keshavlal Karsanji Joshi, at Exh.71, who was serving in the accounts department of Reva Investments private Limited during 1948 to 1955 and was also serving in the accounts department of Sarabhai Kutumb Sakhavat Trust. On behalf of the appellants, appellant No.6, Shantilal Sakarlal Patel was examined at Exh.81, employee of firm 'Sakarlal Ambalal', namely, Amrutlal was examined at Exh.104, and Amrutlal Chimanlal Gandhi, who was Purchase Manager of Sarabhai Management Corporation Limited in June 1967, was examined by the appellants at Exh.116. The parties to the suit had produced voluminous documentary evidence, reference to which shall be made as and when necessary during course of the judgment.

5. Learned City Civil Judge, on appreciation of oral as well as documentary evidence, and arguments advanced by

learned advocates for the parties, held that:

(i) the respondents had proved that the appellants were trespassers of the suit rooms more particularly described in paragraph 11 of the plaint;

(ii) the respondents had right to file the present suit;

(iii) the suit rooms vest in the respondents as trustees of the suit trust of the name and style of 'Maganbhai Karamchand Station Dharmshala Fund'.

(iv) the suit was not bad for misjoinder or nonjoinder of parties as alleged in the written statements filed by the appellants.

(v) the City Civil Court had jurisdiction to entertain and try the present suit;

(vi) the suit was properly valued for the purpose of court fees;

(vii) The respondents were entitled to recover actual and vacant possession of suit rooms as prayed for in paragraph 6(a) of the plaint;

On the basis of abovereferred to conclusion, the trial court decreed the prayer made in the suit with regard to handing over actual and vacant possession of the suit rooms. However, learned trial Judge has rejected prayer of the respondents for recovery of Rs.4920/- or any amount from the appellants as compensation for use and occupation of the suit rooms, which has given rise to filing of the appeal by the original defendants-appellants.

6. Learned counsel for the appellants, Mr.H.B.

Shah, has taken me through the entire record and proceeding produced by the parties at the trial of the suit. Learned counsel for the appellants has not addressed the Court with regard to the findings recorded against the appellants in holding that their possession of the suit rooms described in paragraph 11 of the plaint was illegal and they were trespassers thereof. However, learned counsel for the appellants has strenuously urged that, on the date of filing of the suit, the suit property was not shown as 'trust property' of 'Maganbhai Karamchand Station Dharmshala Fund' in the register maintained under the provisions of the Bombay Public Trust Act, 1950 ('Act' for short). Learned counsel for the appellants submitted that in certified copy of extract of public trust register the suit property was not included as 'trust property' of 'Maganbhai Karamchand Station Dharmshala Fund' and, therefore, the respondents had no title over the suit property on the date of the suit and, hence, they had no right to file the suit as trustees of the Trust for recovery of possession of the suit rooms. Learned counsel for the appellants further

contended that, when the respondents had realised this mistake during hearing of the suit, they had filed change report before the Charity Commissioner and had included the suit property as one of the properties of the Trust 'Maganbhai Karamchand Station Dharmshala Fund'. Learned counsel for the appellants further submitted that certified copy of extract of PTR Register produced at Exh.67 did not mention suit property as trust property of 'Maganbhai Karamchand Station Dharmshala Fund" and, therefore, on the date of filing of the suit, the property did not vest with the Trustees and, therefore, they had no right to file the present suit for recovery of possession of suit rooms. In this connection, learned counsel for the appellants placed reliance on the provision of sub-section (2) of Section 21 of the Act, which provides that, subject to any change recorded under the provisions of the Act, entries made in the register kept under Section 17 of the Act shall be final and conclusive. In short, learned counsel for the appellants submitted that, on the date of the suit, the plaintiffs-respondents had no right to file suit as the suit property was not registered as trust property of 'Maganbhai Karamchand Station Dharmshala Fund" and, therefore, the appeal be allowed and the decree passed against the appellants be set aside.

7. Learned counsel for the respondents Mr.M.G. Doshit submitted that by registered deed dated July 19, 1938, Ambalal Sarabhai, Saraladevi Sarabhai, Bharati Ambalal Sarabhai and Suhrid Ambalal Sarabhai had created a public trust in the name of 'Maganbhai Karamchand' who was the grandfather of Ambalal Sarabhai and certain immovable properties were set apart for charitable and religious purposes. It is contended by learned counsel for the respondents that the said registered deed dated July 19, 1938 was produced at Exh.141 in the suit. In Schedule "J(i)" of the deed, the property bearing City Survey Nos. 666, 667, 668, 669, 670, 671 and 672, (suit property) was included in the said Trust, namely, 'Maganbhai Karamchand Station Dharmshala Fund". It is, therefore, submitted that, by virtue of Trust Deed Exh.141, the suit property vest with the Trustees of 'Maganbhai Karamchand Station Dharmshala Fund".

8. It is worthwhile to note that the trust deed Exh.141 contains paragraph (j) which reads as under:
"(j) As to the Maganbhai Karamchand Station Dharamshala Fund specified in the Schedule "J" hereto and the immoveable property situate near Ahmedabad Railway Station more particularly described in the Schedule "J(i)" hereto to let the shops and such portions of the

said property as the Trustees deem fit and to allow the whole or the rent of the said property to be used as a Dharamshala or rest house for the use of Hindu Pilgrims and Hindu travellers rent free or on payment of such nominal rent as the Trustees may think proper from time to time and to utilise the whole of the net income of the said property and of the said fund or part thereof and/or accumulations thereof and to utilise the whole or part of the said fund for payment of taxes, insurance premia and other outgoings in respect of the said property and for the maintenance, upkeep, extension and improvement thereof."

Thus, since the year 1938, dharamshala trust property had vested in the trustees and the trustees had valid title over the suit property. It is true that, at the time of registration of the suit trust under the provisions of the Act, by inadvertence, the suit property could not be included as trust property in the property register maintained under the Act. Nevertheless, it did not cease to exist as trust property which had already vested in the hands of the trustees by trust deed Exh.141. It can not be said that the trustees at the time of filing of the suit had no title over the suit property. Section 21(2) of the Act provides that entries made in the register kept under Section 17 shall be final and conclusive subject to any change recorded under the provisions of the Act. The trust was registered in the office of the Charity Commissioner by virtue of trust deed Exh.141. The suit property was also included in the trust deed, but, by inadvertence, the suit property was not entered in the register maintained under the Act. Sub-section (2) of Section 21 makes it clear that entries so made under sub-section (1) of Section 21 shall be final and conclusive subject to any change recorded under the provisions of the Act. The suit property was, by registered trust deed Exh.141, already shown as trust property and the said trust deed had already placed the suit trust property in the hands of the trustees, then only ministerial work was to be carried out by entering property in the public trust register maintained under the provision of the Act. By no stretch of imagination, it can be inferred that, at the time of filing of the suit, the respondents-trustees had no title to file suit against the appellants as trespassers of the suit rooms.

9. In my view, the property did vest with the respondents-trustees by creation of registered trust deed Exh.141 on July 19, 1938. During pendency of the suit, necessary change in the property trust register was carried out and the suit trust property, namely, 'Maganbhai Karamchand Station Dharmshala Fund' was

included as property of the public trust. In my view, change report effected during pendency of the suit would relate back to the date of filing of the suit and it is held that the respondents-trustees had title over the suit property and they had right to file the suit. The sanad of survey number 669 is on record at Exh.134 and the relevant document of declaration of trust in respect of various trust funds and properties executed by Ambalal Sarabhai and others on 2.8.1938 is on record at Exh.141. In that view of the matter, it cannot be said that on the date of filing of the suit, the respondents-trustees had no title and the suit property did not vest in them. The documentary evidence produced by the respondents-trustees in the nature of letter dated November 3, 1971 (Exh.149) written by the District Collector, Ahmedabad, giving trustees of the Trust permission to hold land mentioned therein as freehold land, also supports the respondents' case that they had title over the suit trust property and the suit trust property had already vested in them by registered trust deed Exh.141. Therefore, I do not find any merit in the submission of learned counsel for the appellants that on the date of filing of the suit, the respondents-trustees had no title over the suit trust property.

10. The Trial Court had also given cogent and convincing reasons in paragraph 12 of the judgment, which, in my opinion, do not warrant any interference by this Court in the present appeal. With regard to the finding that the appellants did not hold suit rooms in the capacity as it stands, is eminently just and proper as it is based on proper appreciation of oral as well as documentary evidence. Rent note Exh.60 does not indicate that the suit rooms were let out to Hiralal Sakarlal. On the contrary, Hiralal Sakarlal was only entrusted with the work of management of dharmshala and to allot rooms to the travellers. Some sundry articles were lying in the suit rooms, but possession did vest with the trustees and not with Hiralal Sakarlal.

11. Decree passed against the appellants handing over vacant and actual possession of the suit rooms to the respondents-plaintiffs is, therefore, required to be confirmed as this finding recorded by the trial court is not challenged on merit at the time of arguments by learned counsel for the appellants.

12. These are the only submissions made by learned counsel for the appellants.

13. As a result of foregoing discussion, this appeal,

being meritless, is dismissed, with no order as to costs.

(swamy)